

2009-57768 / Court: 295

Filed 09 September 9 P2:46
Loren Jackson - District Clerk
Harris County
ED101J015508660
By: Furshilla Brantley

CAUSE NO. _____

THE KELLY LAW FIRM, P.C., A
TEXAS PROFESSIONAL
CORPORATION, A. DANIEL WOSKA
& ASSOCIATES, P.C., AN OKLAHOMA
PROFESSIONAL CORPORATION,
AND THE LAW OFFICES OF ROBERT
H. WEISS, PLLC, A DISTRICT OF
COLUMBIA PROFESSIONAL
LIMITED LIABILITY COMPANY,

Plaintiffs,

V.

AN ATTORNEY FOR YOU,
CALLIOPE MEDIA, LP, AND
CALLIOPE MEDIA, INC.,
Defendants.

§ IN THE DISTRICT COURT OF

§ HARRIS COUNTY, TEXAS

§ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

COME NOW, Plaintiffs THE KELLY LAW FIRM, P.C., a Texas Professional Corporation, (hereinafter "KELLY"), A. DANIEL WOSKA & ASSOCIATES, P.C., an Oklahoma Professional Corporation, (hereinafter "WOSKA"), and THE LAW OFFICES OF ROBERT H. WEISS, PLLC, A District of Columbia Professional Limited Liability Company, (hereinafter "WEISS"), and file this, their Original Petition against Defendants AN ATTORNEY FOR YOU, CALLIOPE MEDIA, LP, and CALLIOPE MEDIA, INC. for Fraud, Breach of Contract, Unjust Enrichment, and for violations of the Texas Deceptive Practices Act. Plaintiffs institute this action for actual damages, damages to be proven at trial, attorneys fees, costs for bringing this action, pre-judgment and post judgment interest and punitive damages as set forth below.

I.

EXHIBIT

Bloomberg No. 5119

1

DISCOVERY

1. This case will be conducted under Rule 190.3 (Level 3) of the Texas Rules of Civil Procedure.

II.
PARTIES

2. Plaintiff Kelly is a Texas Professional Corporation with its principal offices located at One Riverway, Suite 1150, Houston, Texas 77056.

3. Plaintiff Woska is an Oklahoma Professional Corporation with its principal offices located at 3037 N.W. 63rd Street, Suite 251, Oklahoma City, Oklahoma 731116.

4. Plaintiff Weiss is a District of Columbia Law Firm incorporated pursuant to the laws of the District of Columbia. The Weiss firm also operates branch offices in Jericho, New York and Atlanta, Georgia. Plaintiffs Kelly, Woska, and Weiss will hereinafter be collectively referred to as "**PLAINTIFFS**" unless specifically identified individually by name.

5. Defendant **CALLIOPE MEDIA, LP** is an out of state Limited Partnership with principal offices located at 5107 Cass Street, San Diego, CA 92109. Calliope Media, LP is amenable to service of process through its registered agent Charles E. Purdy, IV at 9444 Balboa Avenue, Suite 225, San Diego, CA 92123.

6. Defendant **CALLIOPE MEDIA, INC.** is also a California Corporation with principal offices located at 7590 Fay Avenue, Suite 202, La Jolla, CA 92037. Calliope Media, Inc. is amenable to service of process through its registered agent Nick Gillaspey at The NBC Tower, 225 Broadway Suite 2220, San Diego, CA 92101.

7. **AN ATTORNEY FOR YOU** is also a named defendant herein. An Attorney For You is a division of Calliope Media, Inc. as cited by the: 1) "An Attorney For You Proposal -

Mesothelioma Campaign 2008" (attached hereto as Exhibit 1); 2) Mesothelioma Contract for exclusive Mesothelioma leads for the entire nation (Mesothelioma Contract, Invoice #TX062608-01, attached hereto as Exhibit 2); and 3) Birth Injury Contract for exclusive Birth Injury leads for the entire nation (Birth Injury Contract, Invoice #TX0731080-02, attached hereto as Exhibit 3). An Attorney For You, Calliope Media, LP, and Calliope Media, Inc. will hereinafter be collectively referred to as the "DEFENDANTS."

III.
JURISDICTION AND VENUE

8. This Court has jurisdiction because this is a lawsuit seeking damages in excess of the minimum jurisdictional limits of the district courts of the State of Texas. Defendants regularly conduct business within Texas and satisfy the minimum contacts threshold for exercising jurisdiction over Defendants so as to not offend the traditional notions of fair play and substantial justice.

9. Venue is also proper in Harris County, Texas. The Defendants regularly conduct business in Harris County and the Plaintiffs is a law firm with its principal office located in Houston, Texas.

IV.
FACTUAL BASIS OF CLAIMS

10. Upon Information and Belief, Defendants operate an online legal services network that specializes in helping legal consumers find legal professionals. For attorneys, Defendants provide leads and referrals from the visitors of its website, anattorneyforyou.com, which are in the areas of law that are of specific interest to that firm.

11. Plaintiffs represent clients throughout the U.S. in various types of claims, including but not limited to claims for injuries suffered as a result of pharmaceutical drug use, product liability

and general personal injury.

12. Plaintiffs became interested in developing its base of clients that have suffered Mesothelioma and also Birth Injuries through the use of internet marketing.

13. Through its advertisements and assertions on its web site, Defendants claimed (and continues to claim) that "our unique system and service offers what no other form of 'advertising' can, tangible, quantifiable results." (at http://www.anattorneyforyou.com/legal/aa_attorneys.htm, attached hereto as Exhibit 4).

14. The "An Attorney For You Proposal – Mesothelioma 2008" (hereinafter referred to as the "Proposal"), which underlies the Mesothelioma Contract with Plaintiffs, states that Defendants will Provide Qualified and Targeted Leads which are generated in the areas specific to a firm's given interests and given geographic locations which is guaranteed to result in signed cases.

V.

SPECIFIC FACTS

15. In or about June 2008, after speaking with Simone Vazquez, an agent vested with apparent authority to act on behalf of the Defendants, Plaintiff Kelly received the "An Attorney For You Proposal – Mesothelioma Campaign 2008" (See, Exhibit 1). According to the Key Features and Benefits of the Proposal, Defendants stated that it would provide the following:

- a. An Exclusive Marketing Program with no competition because members of its services are the only firm contacting the prospective client
- b. Leads sent in real time allowing firms to quickly contact potential clients
- c. Tangible results because An Attorney For You delivers clients – not clicks, nor hits to a firm's website.
- d. Qualified Leads that are generated in the areas specific to a firm's given interests.
- e. Targeted Leads that are generated specific to a firm's given geographic locations.

16. The Proposal states that for an investment of \$500,000.00 (Five Hundred Thousand Dollars), while guaranteeing 10 signed mesothelioma cases, should "generate between 12 and 25

signed mesothelioma cases over the course of a 6 month [internet marketing] campaign." The Proposal further states that looking at the lowest end of possible settlement amounts, each of the cases would settle for \$1 Million and therefore "the 12 retained cases would yield a return of \$12 Million" (See, Exhibit 1).

17. On or about July 1, 2008, Plaintiff Kelly entered into a written contract with Defendants for the exclusive purchase of email leads from the Defendants for Mesothelioma over the entire United States of America. Plaintiffs were required to pay \$500,000 (Five Hundred Thousand Dollars) in advance of Defendants' promise to exclusively provide 60-120 Mesothelioma Leads which was guaranteed to result in a minimum of 10 Cases within 6 months. (See Exhibit 2, Mesothelioma Contract, Invoice #TX062608-01)

18. On or about July 31, 2008, Plaintiff Kelly also entered into a written contract with Defendants for the exclusive purchase of email leads from the Defendants for Birth Injury over the entire United States of America. Plaintiff was required to pay \$400,000 (Four Hundred Thousand Dollars) for the delivery of 3800-5100 Birth Injury Leads to Kelly. A total of \$100,000.00 (One Hundred Thousand Dollar) was required as a deposit to Defendants, of which \$30,000.00 (Thirty Thousand Dollars) would be upon the signing of the contract and \$70,000.00 (Seventy Thousand Dollars) remaining would be paid on or before August 31, 2008. The \$300,000.00 (Three Hundred Thousand Dollar) remaining contract balance was required to be paid in full no later than September 30, 2008. (See Exhibit 3, Birth Injury Contract, Invoice #TX0731080-02). The Birth Injury Contract and the Mesothelioma Contract will hereinafter be collectively referred to as the "Contracts" or "Agreements" unless specifically identified individually by name.

19. Plaintiffs Woska and Weiss were known Third Party Beneficiaries of this contract. Plaintiffs Woska and Weiss, after reviewing Defendants Proposals and the Mesothelioma Contract and Birth Injury Contract, made it clear to Defendants that they were joining this venture with The Kelly Law Firm and have spoken to Thomas Arthur, the co-founder and CEO of Defendant Calliope Media, Inc. and Simone Vazquez, Business Advisor for Defendant Calliope Media, Inc. numerous times in regards to the joint venture. Plaintiffs Woska and Weiss have, along with Kelly, provided the necessary payments to Defendants for both contracts which required a total sum of \$900,000.00 (Nine Hundred Thousand Dollars).

20. From July 2008 through July 2009, Defendants forwarded approximately 643 Birth Injury leads and 535 Mesothelioma Leads to Plaintiffs. As of the date this Petition was executed, 586 of the 643 Birth Injury Leads and 467 of the 535 Mesothelioma Leads which were forwarded were immediately determined as worthless, bogus, and useless for reasons such as: 1) Telephone Number Provided – Not in Service, 2) Telephone Number is a Wrong Number (the named Lead did not reside in the household, or the lead's name was unknown to the lead contacted; 3) The Lead contacted was not interested, were angry when they were contacted, and terminated the contact; 4) The Lead was contacted (more than 5 times) and was Non-Responsive; 5) The Lead contacted already retained other counsel months or weeks ago; 6) did not suffer any injury whatsoever; 7) the statue of limitations for their claim had already expired; 8) or they were simply duplicate leads. After a further investigation, there were 25 Birth Injury Leads and 6 Mesothelioma Leads that were turned down by Plaintiffs because they either did not suffer a threshold injury or did not have the evidence or records to support their claim. Defendants provided Plaintiffs with only 32 Birth Injury Leads and 62 Mesothelioma Leads

which remain "open" because it is still being determined whether the Lead is qualified and of sufficient quality and would therefore result in an actionable case. As of the date this Petition was executed, none of the leads that were forwarded by Defendants have resulted in an actionable case.

21. As a result of the large number of worthless leads provided by Defendants, Plaintiffs incurred significant expense and time loss in trying to either make contact with and/or corresponding with bogus leads. Plaintiff wasted time and expense sending retainers and/or researching medical records for leads that did not suffer a lawfully recognized injury upon which a claim could be made by Plaintiffs.

22. Since entering into the Mesothelioma Agreement and the Birth Injury Agreement with Defendants, Plaintiffs exhaustively contacted Defendants numerous times by telephone and by electronic mail with complaints about the worthless nature of the leads that were provided to Plaintiffs by Defendants.

23. Defendants have heard Plaintiff's complaints but have yet to rectify obvious and glaring defects with Defendants' operations and the problems associated with sending thousands and thousands of Bad Leads. Defendants' responses to Plaintiffs' numerous complaints, specifically from Thomas Arthur and Simone Vazquez, has gone from "we'll see what's going on and get back to you," to "I absolutely want to help you guys sign some of these cases, but at this moment it feels like an uphill battle" rather than either providing Plaintiffs with viable leads or refunding Plaintiffs money which would have avoided the need for this instant action.

**V.
CAUSES OF ACTION**

A. FIRST CAUSE OF ACTION: FRAUD

24. Plaintiffs incorporate by reference all paragraphs of this Petition as if fully set forth herein and further alleges as follows:
25. Defendants had actual knowledge of its inability to fulfill its obligations and promises made in the Agreements between the Parties and that such inability would result in financial harm to Plaintiffs, as has previously been alleged and described.
26. Defendants, before and after agreeing to accept Plaintiff's \$900,000.00 (Nine Hundred Thousand Dollars), had actual knowledge of their inability to provide the sufficient quantity and quality of leads to Plaintiffs that would generate signed clients with actionable cases for Plaintiffs' law firm and that these deficiencies would result in financial harm to Plaintiffs, as has previously been alleged and described.
27. Defendants intentionally omitted, concealed and/or suppressed this information from Plaintiffs, in order to induce Plaintiffs to enter into two binding contracts with Defendants, a Mesothelioma Agreement and a Birth Injury Agreement. Plaintiffs were required to pay a sum of \$500,000 in advance of Defendants' performance to exclusively provide between 60 and 120 Mesothelioma Leads which was guaranteed to result in a minimum of 10 Cases within 6 months. Defendant also contracted to provide exclusively between 3800 and 5100 Birth Injury Leads to Plaintiffs for a sum of \$400,000.
28. Moreover, upon information and belief, Defendants engaged in an aggressive strategy to lure Plaintiffs to pay Defendants money for Leads, which included the "An Attorney For You Proposal" that underlies the contract, which was full of representations, projections, and a Signed Case Guarantee, when it was known or should have been known by Defendants at the time of

these representations that they were, in fact, false and misleading.

29. Defendant made such representations with the intent, design, and purpose that Plaintiffs and others rely on their false representations leading Plaintiffs to execute both binding Agreements with Defendants and pay a total sum of \$900,000.00 (Nine Hundred Thousand Dollars).

30. At all times herein, Plaintiffs were unaware of the falsity underlying Defendant's statements and reasonably believed Defendant's false statements about their ability and capacity to fulfill their obligations as set forth in the Mesothelioma Agreement (See, Exhibit 2) and the Birth Injury Agreement (See, Exhibit 3).

31. At all times herein, Plaintiffs were unaware of the falsity underlying the Defendant's statements and reasonably believed Defendant's false statements about their promise to generate Leads that were qualified and targeted and would result in Signed Cases.

32. Plaintiffs had a right to rely on Defendants' representations because the Defendants held themselves out as having expertise and an internet marketing strategy that got results. Defendants also knew that Plaintiffs would rely on the representations of Defendants about their networks of websites which would generate Leads and Signed Cases for Plaintiffs.

33. Plaintiffs justifiably relied upon Defendants' representations to their combined detriment and/or were induced by the Defendants' false statements and active concealment of the lack quality of the leads it could generate because at no time did the Plaintiffs have the knowledge or expertise necessary to independently evaluate Defendants' network of websites and/or the visitors to its website which was to provide the qualified and targeted Leads Plaintiffs paid for.

34. Despite repeated calls from Plaintiffs to the Defendants regarding the lack of leads and poor quality or bogus Leads, the Defendants continued to falsely, recklessly, and intentionally misstate the truth about the Leads being generated by the Defendants. The Plaintiffs continued to rely on the representations by the Defendants until it was clear that the Defendants appeared to have no intention of performing under the contracts.

35. As a direct and proximate result of the Defendants' material, false statements and omissions, Plaintiffs engaged in two contractual agreements with Defendants to purchase Qualified Leads from Defendants, and thereby suffered and will continue to suffer damages and economic loss as previously described herein.

B. SECOND CAUSE OF ACTION: BREACH OF CONTRACT

36. Plaintiffs incorporate by reference all other paragraphs of this Petition as if fully set forth herein and further alleges as follows:

37. Plaintiffs were led to believe Defendants were ready, willing and able to provide Plaintiffs with 60-120 Mesothelioma Leads which would guarantee at minimum 10 "Signed Cases" within 6 months of the start of its marketing campaign and also 3800-5100 Birth Injury Leads from a separate campaign. Plaintiffs were induced to sign two separate Agreements with Defendants, the Mesothelioma Agreement and the Birth Injury Agreement, based upon Defendants' representations of its experience and capability to provide Qualified Leads suitable for conversion by Plaintiffs into retained clients with actionable cases.

38. Defendants provided Plaintiffs with 457 Birth Injury Leads and 266 Mesothelioma Leads which were worthless, bogus and useless, 23 Birth Injury Leads and 25 Mesothelioma Leads that were later turned down by Plaintiffs after a further investigation, and only 50 Birth Injury and 46

Mesothelioma Leads remain "open" because it is still being determined whether the Lead is possibly suitable and qualified, however none of the leads that were forwarded were Qualified Leads suitable for conversion by Plaintiffs into retained clients with actionable cases.

39. Defendants did not have the resources or capabilities it claimed it had and did not fulfill its obligation to provide 60-120 Mesothelioma Leads which would guarantee at minimum 10 "Signed Cases" and the 3800-5100 Birth Injury Leads it promised to Plaintiffs.

40. Defendants' breached both the July 1, 2008 Mesothelioma Agreement and the July 31, 2008 Birth Injury Agreement. This has caused Plaintiffs to incur significant expense and time loss in trying to either make contact with and or do research for thousands of bogus leads.

C. THIRD CAUSE OF ACTION: UNJUST ENRICHMENT

41. Plaintiffs incorporate by reference all other paragraphs of this Petition as if fully set forth herein and further alleges as follows:

42. Defendants have been unjustly enriched through their actions in this case. Defendants have not provided the contracted number of qualified Leads to Plaintiffs. Defendants' wrongful conduct deprived Plaintiff's of its right to receive the benefit of its bargains made with Defendants while Defendants would receive \$900,000.00 (Nine Hundred Thousand Dollars) in total from Plaintiffs for both contracts. In addition, in an attempt to mitigate damages, Plaintiffs incurred substantial out of pocket costs to investigate and determine that the leads provided were irreparably deficient and not according to the specifications set forth in the Agreement made between the Parties. Plaintiffs are entitled to the return of their money.

43. The benefits received and enjoyed by Defendants as a result of their actions described above amounts to an unjust enrichment under Texas law.

44. Therefore, Plaintiffs are entitled to the equitable remedy of Restitution by recovering from Defendants the reasonable value of the benefits wrongfully retained by Defendants.

D. FOURTH CAUSE OF ACTION: VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT

45. Plaintiffs incorporate by reference all other paragraphs of this Petition as if fully set forth herein and further alleges as follows:

46. The Texas Deceptive Trade Practices Act (§17.41 of the Texas Business and Commerce Code) provides a private conjunctive remedy to persons likely to suffer pecuniary harm for conduct involving either misleading identification of business or goods or false or deceptive advertising. The court is authorized to award reasonable attorney's fees to the Plaintiff if the person charged with a deceptive trade practice has willfully engaged in the practice knowing it to be deceptive. The pertinent conduct includes making statements in connection with the sale of goods or services which are known or should have been known to be untrue or misleading, and advertising goods or services without intent to sell them as advertised. The Texas Deceptive Trade Practice Act deals with misleading identification of businesses and goods and false and deceptive advertising.

47. Defendants have clearly violated various sections of the Texas Deceptive Trade Practices Act.

48. Defendants violated these provisions when they: deceptively and intentionally misrepresented that its goods (Leads) were qualified and targeted and would generate cases when they have not. From the 867 total Birth Injury and Mesothelioma Leads that were forwarded by Defendants, approximately 723 of the leads provided by Defendant were to people

who: 1) were not exposed to asbestos and/or did not sustain any injury caused by the exposure; 2) did not have a child that suffered a brain injury; 3) had a telephone number that was either not in service or was a wrong number, 4) were non-responsive, 5) simply were not interested and therefore angry when Plaintiffs' staff contacted them; 6) had a statute of limitations for their claim which expired; or 7) already retained an attorney to represent them for the injuries they suffered.

49. Defendants willfully and intentionally provided leads as described in the preceding paragraph, knowing that these leads were not qualified, targeted, or had any chance of resulting in a viable case to be brought by Plaintiffs on behalf of its retained client. Thus, Defendants engaged in fraudulent, deceptive, unfair and willfully intentional wrongful conduct. Defendants warranted that it could provide 60-120 Mesothelioma Leads which would guarantee at minimum 10 "Signed Cases" and 3800-5100 Birth Injury when it knew that it could not fulfill such an order. Plaintiffs relied upon Defendants' representations and guarantees made in its "An Attorney For You Proposal" (See Exhibit 1) and the representations on its web site, described herein. Defendants' representations on its website are advertisements for purposes of this Act and constitute a deceptive trade practice calculated to cause pecuniary harm to the public in general, including Plaintiffs who read and relied upon such representations.

51. Defendants represented and advertised on its websites that it was capable of, and maintained such resources and databases to its websites from which it would provide "qualified" and "targeted" leads according to a Plaintiffs' requirements because it maintained certain databases comprised of people who visited the website because they suffered the targeted injuries and were seeking a lawyer to represent them. Defendants advertised that it could

provide Plaintiffs with such qualified leads that were suitable for converting to retained clients with legitimate claims. Upon Information and Belief, Defendants knew that the majority of the leads were worthless. Defendants' deceptive and wrongful trade practices and actions constitute a violation of the Texas Deceptive Trade Practices Act and caused Plaintiffs specific pecuniary harm and damages. Defendants' fraudulent and misleading trade practices were wanton, willful, intentional, and/or made with a conscious disregard for the truth, which caused harm to the Plaintiffs and poses a risk of harm to the general public.

VI. **DAMAGES**

52. As a result of Defendants' conduct described herein, Plaintiffs suffered pecuniary damages and monetary loss and continues to suffer damages. Plaintiffs' damages include but are not limited to past costs that were paid to Defendants for Leads which were not of sufficient quality to result in actionable "cases" as promised by Defendants in the executed Agreements; costs that were paid for Leads that were never received; out of pocket costs for staff salaries to investigate and confirm the leads provided were worthless and not of the quality that Defendant promised; and future costs associated with investigating the worthless and non-suitable Leads. Plaintiffs further claim treble damages, as permitted under the DTPA. Plaintiffs further reserve the right to amend this Petition when the true extent of all damages has been ascertained.

VII. **PUNITIVE DAMAGES**

53. Plaintiffs incorporate by reference all other paragraphs of this Petition as if fully set forth herein and further alleges as follows:

54. Plaintiffs are entitled to punitive damages pursuant to Texas Civil Practices and Remedies

Code §41.003(3) because Defendants intentionally misled Plaintiffs by making false representations about their capabilities of fulfilling their obligations under the Agreements executed by both parties. Defendants downplayed, understated and/or consciously disregarded their capabilities to generate qualified leads and signed clients with actionable cases from their network of websites.

55. Defendants were or should have known that the leads they generated to Plaintiffs were vastly below criteria for a suitable lead and/or actionable claim.

56. Defendants' actions described above were performed fraudulently, willfully, intentionally, and/or with malice aforethought in their disregard for the rights of the Plaintiffs.

57. Accordingly, Plaintiffs seeks and is entitled to punitive and/or exemplary damages in an amount to be determined at trial. Plaintiffs further reserve the right to amend this Petition as required.

VI.
JURY DEMAND

58. Plaintiffs respectfully request a trial by jury on all claims asserted in this Petition.

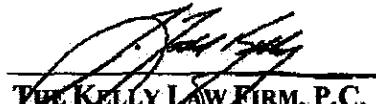
WHEREFORE, Plaintiffs Kelly, Woska, and Weiss pray for relief and judgment against Defendants An Attorney For You, Calliope Media LP, Calliope Media Inc., and each of them, jointly and severally, as follows:

1. Compensatory damages, in excess of the jurisdictional amount, and in amount to fully compensate Plaintiffs for all of their injuries and damages, both past and present;
2. Special damages, in excess of the jurisdictional amount, and in an amount to fully compensate Plaintiffs for all of their damages, both past and present, including but not limited to past costs that were paid to Defendants for Leads which were not of sufficient quality to result in actionable "cases" as promised by Defendants in the executed Agreements; costs that were paid for Leads that were never received; out of pocket costs for staff salaries to investigate and confirm the leads provided were

worthless and not of the quality that Defendant promised; and future costs associated with investigating the worthless and non-suitable Leads.

3. Pre-Judgment and post-Judgment Interest at a rate of 10% per annum, or at the maximum rate set by law until such time as all monies owed by Defendants to Plaintiffs is paid;
4. Punitive and exemplary damages in the maximum amount allowed by law;
5. Attorneys' fees, expenses, and costs of this action;
6. Treble damages as allowed by law;
7. Such further relief as this Court deems necessary, just and proper.

Respectfully submitted,

By: 

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ATTORNEYS FOR PLAINTIFF



I, Loren Jackson, District Clerk of Harris
County, Texas certify that this is a true and
correct copy of the original record filed and or
recorded in my office, electronically or hard
copy, as it appears on this date
Witness my official hand and seal of office
this September 9, 2009

Certified Document Number: 43273972 Total Pages: 17

LOREN JACKSON, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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An Attorney For You Proposal

**The Kelly Law Firm
Mesothelioma / Asbestosis**



THE KELLY LAW FIRM / AN ATTORNEY FOR YOU - MESOTHELIOMA

Section

1

Company Summary

An Attorney For You – A division of Calliope Media, Inc

1.0 Mission Statement

Calliope Media, Inc is dedicated to helping legal consumers find legal professionals throughout the United States.

1.1 Key Features and Benefits

Here is a brief overview of the key features and benefits of being a member of the An Attorney For You network:

<u>Features</u>	<u>Benefits</u>
Exclusive Marketing Program	No Competition— the exclusive firm is the only firm contacting the prospective client.
Subscription Service	No Fee Splitting – the membership fee is the only charge with no 'backend' payments.
Real-Time	Leads are sent in real-time allowing firms to quickly contact potential clients.
Tangible	AAFY delivers clients— not clicks, nor hits to a firm's website. The number of leads can quickly be determined, leaving nothing to guesswork.
Anonymity	The consumer does not know which firms received their case inquiry. Thus, there is no obligation to follow-up on cases that do not meet a firm's criteria.
Qualified Leads	Leads are generated in the areas specific to a firm's given interests.
Targeted Leads	Leads are generated specific to a firm's given geographic locations.

THE KELLY LAW FIRM / AN ATTORNEY FOR YOU - MESOTHELIOMA

Section
2

AAFY Pricing and Projected Case Volume

Mesothelioma Campaign 2008

2.0 Executive Summary

The request has been made to provide the pricing and projected volume of cases for the following campaigns:

- Mesothelioma

The pricing and projected numbers are based on a 6 month commitment and on a national level. As requested, prices are provided for only the exclusive campaign.

2.1 Mesothelioma - AAFY

The Mesothelioma campaign generates both mesothelioma and asbestos-related cases. This campaign is designed to keep the cost per signed mesothelioma case between 20k and 40k; it is important to note that the trend of more firms shifting money from television to Internet marketing seems to be forcing the range upwards to 30k to 50k as a rule.

The table below illustrates AAFY's most conservative estimate of the cost-effectiveness of running this campaign. We define conservative as relying on the industries standard methodologies such as pay-per-click, search engine optimization and other traditional mediums. It also means that we expect the campaign to generate more leads—but not fewer than outlined here:

Conservative:

Duration	Campaign	Projected	Kiosk clients	Asbestos	Total Volume
6 months	Exclusive	\$500,000	60-120 leads	120-240 leads	180-360 leads*

* We are very proud of the results we obtain for our clients, but past results afford no guarantee of future results; that every campaign is different and must be judged on its own merits.

THE KELLY LAW FIRM / AN ATTORNEY FOR YOU - MESOTHELIOMA

500k investment will generate between 12 and 25 signed mesothelioma cases over the course of the 6 month campaign.

Our goal is to provide the Kelly Law Firm enough leads to retain 12 cases. While the settlement amounts for Mesothelioma cases vary from about \$1 Million to \$25 Million, we could simply look at the low end of the settlement amounts and assume that each of the retained cases settle for an average of \$1 Million. The 12 retained cases would yield a return of \$12 Million. The firm would receive an average of 40% depending on the retainer issued by Kelly Law Firm.

The return on investment for those 12 cases would be **\$4.8 Million**.

2.1 Signed Case Guarantee - AAFY

AAFY's company policy has been set such that it does not guarantee any number of cases for a given investment. However, in an effort to secure The Kelly Law Firm as a member of its service, AAFY has developed a policy specifically requiring that it share in the risk associated with executing its mesothelioma marketing campaign. That policy is outlined below:

- For an investment of 500k, AAFY guarantees 10 signed cases (50k per signed case) as a result of the 6 month campaign.
- AAFY will refund 10k for every case below the target of 10 cases. If no cases are signed the refund would be 100k, if 5 are signed the refund would be 50k, if 8 are signed the refund would be 20k, etc.

This policy was developed based on the company goal of a 10-15% profit margin. On a 500k investment, the profit margin should fall between 50k and 75k. If the campaign does not produce results, the policy outlined above will require AAFY to refund all of its profit margin plus as much as 25-50k of its own money to remedy the situation. This policy fairly reduces the financial risks for The Kelly Law Firm and increases the monetary risk for AAFY in a significant and meaningful way.

Notably, this guarantee is designed to handle the worst-case-scenario. To the best of its knowledge, AAFY has no reason to believe that it cannot deliver on its promise of a minimum of 10 signed cases. It is also important to keep in mind that the goal of the campaign is to deliver signed cases to The Kelly Law Firm within the range of 20 to 40k per signed case. AAFY will only consider the campaign a 'success' if it delivers 12 to 25 signed cases over the course of 6 months.

In summary, the bottom line regarding the Signed Case Guarantee is that the risk and success of AAFY and The Kelly Law Firm are tied together— your risk is our risk, your success is our success.

THE KELLY LAW FIRM / AN ATTORNEY FOR YOU - MESOTHELIOMA

2.2 An Attorney For You - Web Traffic Market Share

AAFY has 2 major sites in its network that generate the majority of its traffic. They are as follows:

- AnAttorneyForYou.com is AAFY's trademarked SEO site and according to Google Analytics has averaged 5440 unique visitors per month over the last 6 months.
- An-Attorney-For-You.com is the AAFY pay-per-click (PPC) site and according to Google Analytics has averaged 5219 unique visitors per month over the last 6 months.

Combining the two averages, AAFY's main sites have averaged 10,659 unique visitors per month for the last 6 months.

2.3 Previous Results: Mesothelioma Case Study 2.19.06 - 3.20.07

In 2007, AAFY conducted a study in which it followed up with 38 mesothelioma cases that it received from 2/19/06 through 3/20/07. Of the 38 cases, 10 confirmed that they had been signed by a law firm. The remaining 28 could not be reached, did not get contacted, or did not have a case.

2.4 Additional Services: Branding on AAFY

AAFY has the ability to place a link from its site to KellyLawFirm.com on its mesothelioma/asbestosis related pages. This value added benefit will help to promote the The Kelly Law Firm site and brand recognition.

THE KELLY LAW FIRM / AN ATTORNEY FOR YOU - MESOTHELIOMA

Section
3

Alternate Pricing and Projected Case Volume

Mesothelioma Campaign 2008

3.0 AAFY Maximum Efficiency

The proposal outlined in sections 1 and 2 are based on a 500k investment. This amount does not allow AAFY to run the campaign at maximum efficiency for the entire duration of the contract. A larger budget will yield better results, but the AAFY system does have a point of diminishing returns. The graph below charts out the projected number of leads resulting from the given investment under AAFY's current methodologies. Given this information The Kelly Law Firm can determine whether a larger investment is warranted at this time.

Investment	Term	Number of Leads	Guaranteed Cases
\$500,000	6 months	60-120 leads	10 cases
\$576,000	6 months	72-139 leads	12 cases
\$648,000	6 months	84-157 leads	14 cases
\$720,000	6 months	95-173 leads	16 cases
\$792,000	6 months	108-191 leads	18 cases
\$864,000	6 months	111-195 leads	20 cases
\$936,000	6 months	114-199 leads	22 cases
\$1,008,000	6 months	116-202 leads	24 cases

* The number of guaranteed cases is calculated by dividing the investment by the worst case scenario of 50k per signed case. E.g. \$500k/50k per case = 10 cases.

THE KELLY LAW FIRM / AN ATTORNEY FOR YOU - MESOTHELIOMA

This chart reflects a proportional relationship between increasing the investment and an increase in the number of mesothelioma leads until the investment ranges between \$792,000 and \$864,000.

At this point, an increase in the investment seems to have little effect on the overall number of leads. Taking these factors into account, the most efficient strategy would be to raise the investment by 58% from 500k to 792k.

For that The Kelly Law Firm will see an increase in the minimum number of leads jump from 60 to 108—an increase of 80%—which will certainly result in more signed cases—the optimal investment is 792k.

CONCLUSION:

Again, Calliope Media's primary goal is to provide the Kelly Law Firm enough leads to retain 12 cases. While the settlement amounts for Mesothelioma cases vary from about \$1 Million to \$25 Million, we could simply look at the low end of the settlement amounts and assume that each of the retained cases settle for an average of \$1 Million. The 12 retained cases would yield a return of \$12 Million. The firm would receive an average of 40% depending on the retainer issued by Kelly Law Firm.

The return on investment for those 12 cases would be \$4.8 Million.



I, Loren Jackson, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date
Witness my official hand and seal of office
this September 9, 2009

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 ED101J015508680
 By: Furehilla, Brantley



Calliope Media

anattorneyforyou.com

Listing Services Agreement

The Kelly Law Firm
 C/O Todd Kelly
 One Riverway Drive
 Suite 1150
 Houston, TX 77056
 Phone: (713) 255-2055
 Fax: (713) 523-5939

Simone Vazquez
 Calliope Media Inc.
 7590 Fay Avenue
 Suite 202
 La Jolla, CA 92037
 Office: (858) 366-0372
 Fax: (858) 366-0377

Invoice # TX062608-01

Calliope Media guarantees that An Attorney For You directory will provide e-mail leads for the duration of the contract and that The Kelly Law Firm will be receiving Exclusive e-mail referrals for Mesothelioma for the entire nation.

Membership Listings Purchased: (activated upon payment only)

Mesothelioma: Exclusive: Nationwide

Membership Payment Terms:

The method of payment chosen is: (please initial the preferred payment option)

Check	Duration	Campaign	Investment	Mesothelioma	Guarantee
<input checked="" type="checkbox"/>	6 Months	Exclusive	\$500,000	60-120 Leads	10 Cases*
	6 Months	Exclusive	\$576,000	72-139 Leads	11 Cases*
	6 Months	Exclusive	\$648,000	84-157 Leads	13 Cases*
	6 Months	Exclusive	\$720,000	95-173 Leads	14 Cases*
	6 Months	Exclusive	\$792,000	108-191 Leads	16 Cases*
	6 Months	Exclusive	\$864,000	111-195 Leads	17 Cases*
	6 Months	Exclusive	\$936,000	114-199 Leads	19 Cases*
	6 Months	Exclusive	\$1,008,000	116-202 Leads	20 Cases*

- Please see attached proposal regarding guaranteed cases.

Payment Method:

Recommendation: **Payment via wire transfer is the advised method of payment for this contract. Simone Vazquez to provide wire transfer account information.**

Credit Card (Please circle one)

American Express MasterCard VISA

Cardholder's Name: _____

Account # _____

Expiration Date: _____ / _____

I authorize Calliope Media to automatically bill the credit card listed monthly for renewals based on the option chosen. Billing will only end when customer provides written cancellation within 30 days

Please make all checks payable to Calliope Media, Inc.

Check: (please initial) For your convenience, you may use our FedEx account to send check payments. Account #: 240617781. Please mark the box titled 'Priority Overnight'. Note: Your membership will not be activated until payment is received

PLAINTIFF'S
EXHIBIT

Calliope Media

anattorneyforyou.com



1. Calliope Media services to be provided.

Calliope Media will provide membership listing services to The Kelly Law Firm (Company). For the services provided, the Invoice #TX062608-01 must be attached and initialed for this agreement to be binding upon the parties. Calliope media agrees to provide An Attorney For You listing services as more particularly described by the Invoice attached, the terms of which are incorporated in this agreement in full. Calliope Media agrees to provide the Company with a listing on Calliope Media's "An Attorney For You" in the location and for the terms and fees as described in the Invoice. Calliope Media makes no representations regarding the effectiveness or impact of any kind that this listing may or may not have on the Company or its business.

2. Fees and term

The Company agrees to pay Calliope Media for the services in the amounts and manner stated in the Invoice. Calliope Media will start membership services upon the date of the first payment by Company. The term of this agreement is outlined in the Invoice. Any Company failure to pay as required by this agreement is a material breach hereof. Upon breach, Calliope Media may suspend all services without limitation and without liability to the Company. The Company shall be responsible to reimburse Calliope Media for all costs, including attorney fees, incurred in collecting all unpaid amounts and for all unpaid services provided by Calliope Media to the Company.

3. Indemnification

The Company represents and warrants that it is authorized and has the right to provide the service to be advertised pursuant to this Agreement. The Company agrees to indemnify and defend Calliope Media and its affiliates, representatives and agents from any and all damages (including attorneys' fees) arising out of any breach of this representation and warranty.

4. Limit of Liability

The amount of damages that the Company may recover from Calliope Media under any circumstances, including damages resulting from errors in or omissions of any kind, and including any personal injury damages of any kind from, by or to the Company or any person or entity with which the Company associates or provides services of any kind, shall be limited to an amount not exceeding the total of all charges and fees set forth in the Invoice. This provision shall constitute and complete waiver by the Company of any claim for damages, including but not limited to, damages recoverable in contract, tort, and otherwise, whether caused by Calliope Media, its affiliates, agents, employees, subsidiaries, representatives, assigns, or otherwise to the extent that the damages exceed the total amount set forth in the Invoice. The Company agrees to give Calliope Media written notice of any error, omission, or violation of any third party right of any kind, immediately upon learning of same.

5. Agreement

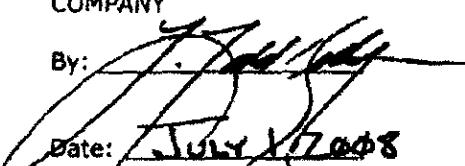
This agreement shall constitute the entire contract between Calliope Media and the Company. Calliope Media shall not be bound by any representation, understanding or agreement not expressly set forth in writing in this agreement. All modifications must be in writing and signed by both parties.

Calliope Media / An Attorney For You

By: _____

Date: _____

COMPANY

By: 

Date: July 17 2008

ADMIN USE ONLY

Approved By:

Signature: _____

Date: June 26, 2008



I, Loren Jackson, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date
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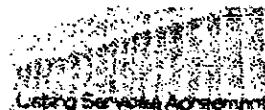
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Filed 09 September 9 P2:48
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Harris County
ED101J015508860
By: Furshilla Brantley



Calliope Media

anattorneyforyou.com



Legal Services Agreement

The Kelly Law Firm, P.C.
Attn: Todd Kelly
One Riverway Drive, Suite 1150
777 South Post Oak Lane
Houston, Texas 77056-1920
Phone: (713) 255-2055
Fax: (713) 523-5939

Simone Vazquez
Calliope Media Inc.
7590 Fay Avenue
Suite 202
La Jolla, CA 92037
Office: (858) 366-0372
Fax: (858) 366-0377

Invoice # TX073108-02

Calliope Media guarantees that An Attorney For You directory will provide e-mail leads for the duration of the contract and that Todd Kelly will be receiving e-mail referrals exclusively for Birth Injury for the entire nation.

Membership Listings Purchased: (activated upon payment only)

Birth Injury: Nationwide 3800-5100 Birth Injury Leads

Membership Payment Terms:

The method of payment chosen is: (Initial below)

Non-specified contractual period for contract value of \$400,000

Details of contract payment:

\$100,000 deposit (\$30,000 paid upfront / \$70,000 remaining deposit balance paid on or before August 31st, 2008)

\$300,000 remaining contract balance paid in full no later than September 30th, 2008.

Payment Method:

Recommendation: Payment via wire transfer is the advised method of payment for this contract. Simone Vazquez to provide wire transfer account information.

Credit Card (Please circle one)

American Express MasterCard VISA

Cardholder's Name: _____

Account #: _____

Expiration Date: _____ / _____

PLAINTIFF'S
EXHIBIT
3



Calliope Media

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1. Calliope Media services to be provided.

Calliope Media will provide membership listing services to The Kelly Law Firm, P.C. (Company). For the services provided, the Invoice #TX073108-02 must be attached and Initialed for this agreement to be binding upon the parties. Calliope media agrees to provide An Attorney For You listing services as more particularly described by the Invoice attached, the terms of which are incorporated in this agreement in full. Calliope Media agrees to provide the Company with a listing on Calliope Media's "An Attorney For You" in the location and for the terms and fees as described in the Invoice. Calliope Media makes no representations regarding the effectiveness or impact of any kind that this listing may or may not have on the Company or its business.

2. Fees and term

The Company agrees to pay Calliope Media for the services in the amounts and manner stated in the Invoice. Calliope Media will start membership services upon the date of the first payment by Company. The term of this agreement is outlined in the Invoice. Any Company failure to pay as required by this agreement is a material breach hereof. Upon breach, Calliope Media may suspend all services without limitation and without liability to the Company. The Company shall be responsible to reimburse Calliope Media for all costs, including attorney fees, incurred in collecting all unpaid amounts and for all unpaid services provided by Calliope Media to the Company.

3. Indemnification

The Company represents and warrants that it is authorized and has the right to provide the service to be advertised pursuant to this Agreement. The Company agrees to indemnify and defend Calliope Media and its affiliates, representatives and agents from any and all damages (including attorneys' fees) arising out of any breach of this representation and warranty.

4. Limit of Liability

The amount of damages that the Company may recover from Calliope Media under any circumstances, including damages resulting from errors in or omissions of any kind, and including any personal injury damages of any kind from, by or to the Company or any person or entity with which the Company associates or provides services of any kind, shall be limited to an amount not exceeding the total of all charges and fees set forth in the Invoice. This provision shall constitute and complete waiver by the Company of any claim for damages, including but not limited to, damages recoverable in contract, tort, and otherwise, whether caused by Calliope Media, its affiliates, agents, employees, subsidiaries, representatives, assigns, or otherwise to the extent that the damages exceed the total amount set forth in the Invoice. The Company agrees to give Calliope Media written notice of any error,

omission, or violation of any third party right of any kind, immediately upon learning of same.

5. Agreement

This agreement shall constitute the entire contract between Calliope Media and the Company. Calliope Media shall not be bound by any representation, understanding or agreement not expressly set forth in writing in this agreement. All modifications must be in writing and signed by both parties.

Calliope Media / An Attorney For You

By: _____

Date: _____

COMPANY

By: _____

Date: _____

ADMIN USE ONLY

Approved By:

Signature: _____

Date: July 31st, 2008



I, Loren Jackson, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date

Witness my official hand and seal of office
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Harris County

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By: Furshilla Brantley

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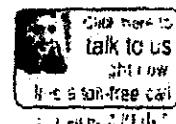
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4



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